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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections of the) MM Docket No. 92-266
Cable Television Consumer)
Protection and Competition Act of)
1992: Rate Regulation)

REPLY COMMENTS OF E! ENTERTAINMENT TELEVISION, INC.

E! Entertainment Television, Inc., ("E!") by its attorneys, hereby replies to comments submitted in response to the Commission's Third Notice of Proposed Rulemaking.¹ From E's perspective as a supplier of programming to the cable industry,² the most significant issue in this phase of the Commission's on-going deliberations on cable television rates is the treatment of "going-forward" costs under the rate benchmarks established by the Commission.

Since the Commission first took up the difficult task of crafting rate regulations for the cable industry,³ E! has been a regular participant. Like other programmers that have participated in these proceedings, E! persistently has urged

¹ First Order on Reconsideration, Second Report & Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266, or "Reconsideration Order" FCC 93-428 (released August 27, 1993) ("Third Notice").

² E! provides a relatively new, advertiser-supported programming service consisting of news and features on the world of entertainment and serves as an electronic review of entertainment choices to approximately 21,000,000 subscribers.

³ See Notice of Proposed Rulemaking, MM Docket No. 92-266, 8 FCC 510 (1992).

the Commission not to ignore the impact that its rate rules will have on future investment in programming.

E! has been encouraged each time the Commission has acknowledged the importance of a vigorous and multifaceted program market as a policy objective in these proceedings;⁴ however, even at this late phase in the process, E! remains troubled that the rate regime still lacks incentives necessary to insure even the continued growth and development of existing networks, not to mention the creation of new program services.

In order to insure that the growth and diversity of cable programming proceeds apace, the rate regulation scheme must contain incentives for cable operators to add new programming. At present, such incentives are uncertain, if not wholly inadequate. The rate benchmarks, in particular, currently are geared only to let an operator hold its own, but not to upgrade or expand. Indeed, the only way a cable operator can hope to recover the cost of upgrading channel capacity needed to accommodate new programming is to undertake a costly and time-consuming cost-of-service showing.⁵

⁴ Rate Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177 (released May 3, 1993) at ¶ 215; See e.g., Reconsideration Order at ¶ 114.

⁵ The Commission's cost-of-service rules, of course, have not yet been issued. If the Commission is persuaded by
(continued...)

In the Third Notice, the Commission has indicated a willingness to address program incentives, and many of the commenting parties have encouraged it to do so.⁶ Unfortunately, there also are a number of commenters that have urged the Commission to keep rates low, at the expense of the financial vitality of the industry, the quality of the service it offers and its ability to upgrade and expand.⁷

Insofar as programming is concerned, there must be a mechanism to adjust the benchmarks so that cable systems can add new programming to existing channels and, if their existing capacity is filled, add new channels to accommodate additional programming.

There are several proposals before the Commission in this proceeding that would help achieve these goals. Among them are the following, which E! strongly supports:

⁵(...continued)
some of the comments filed in that proceeding (See, e.g., Comments of NATOA, et. al. in MM Docket No. 93-215 at 7-11, it is doubtful that even a cost-of-service showing will provide all operators with a return sufficient to spur continued growth and expansion.

⁶ See, e.g., Comment of the Massachusetts Community Antenna Television Commission at 2-4; Comments of the Disney Channel at 2-8; Comments of Discovery Communications, Inc. at 2-11.

⁷ See, e.g., Comments of NATOA, et al. at 4-10; Comments of Austin, Texas, et al. at 1-81.

- (1) Incorporate a Reasonable Profit Margin into Benchmark Adjustments for Increases in Programming Costs

Although the Commission's price cap mechanism allows operators to pass through programming cost increases in excess of inflation, systems are not permitted to earn a profit on this sum. This approach does not provide a sufficient incentive for operators to add programming. Over time, whatever profit margin might initially exist under the benchmark regulation will erode as further programming increases and other external costs are passed through without any mark-up and as the GNP-PI adjustment falls short of covering the increases in all internal costs.

- (2) Allow the Adjustment Profit Margin for all Categories of Programming

In its Reconsideration Order,⁸ the Commission imposed a market-based safeguard for affiliate transactions which allowed cable operators to pass through increases in the cost of programming from affiliated entities that exceed inflation only to the extent that the price charged to the affiliated system reflects prevailing marketplace prices or the fair market value of the programming. With this safeguard in place, there is no basis for disallowing a profit margin to be added to the adjustment for increases in affiliated programming costs. The Commission is well aware of the vital role that cable industry funding has played in the development of new programming networks, including E!.⁹ The Commission should avoid taking action that would unnecessarily destroy the programming industry's ability to obtain financial support from this source in the future.

⁸ Reconsideration Order at ¶ 114.

⁹ Time Warner Cable, Comcast Cable Communications, Inc., Cox Communications, Inc., Continental Cablevision, Inc., NewChannels Corp., United Cable Television Corp., Home Box Office, Inc. and Warner Communications, Inc. are all investors in E!.

- (3) Provide a Means More Expedient than a Full Cost-of-Service Proceeding for Recovering of Investment in System Upgrades

The existing price cap mechanism generally fails to permit full recovery of capital investment in upgrades and rebuilds. An add-on to the benchmark rate, reviewed on a streamlined cost-of-service basis, would address this concern. E! notes that support for this approach exists outside the cable industry. For example, several municipal associations support this method of allowing operators to increase their per-channel rates to the extent necessary to finance otherwise unrecovered costs of system improvements.¹⁰ Without a streamlined means of taking rebuild or upgrade costs into account, system operators will be discouraged from adding the capacity essential to accommodate new program offerings.

¹⁰ See, e.g., Comments of Utah League of Cities and Towns at 7; see also Comments of NATOA, et al. at 15.

E! is proud of the advances that the programming community has made in recent years and is hopeful that E! will continue to participate in expanding the choices available to the viewer. Whether American television viewers continue to experience abundant new choices and innovation hinges, to a great extent, on the outcome of this proceeding.

Respectfully submitted,

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October 1, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of October, 1993,
I caused copies of the foregoing "Reply Comments of E!
Entertainment Television, Inc." to be mailed via first-class
postage prepaid mail or by hand delivery to the following:

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*Service accepted on behalf of
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